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DATE MAILED: 03/02/2004

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/995,882	11/28/2001	John H. Hales	2001-IP-00579 UI USA	1615
20558	7590 03/02/2004		EXAM	INER
KONNEKER & SMITH P. C. 660 NORTH CENTRAL EXPRESSWAY SUITE 230			NEUDER, WILLIAM P	
			ART UNIT	PAPER NUMBER
PLANO, TX	75074		3672	

Please find below and/or attached an Office communication concerning this application or proceeding.

Application N.   Application N.   Application N.   Application N.   Application N.   Ob/995,882   Examiner   Examiner   Art Unit   3872				$\mathcal{N}$			
Examiner    Examiner   Since Action Summary   Examiner   William P Neuder   3672			Application N .	Applicant(s)			
William P Neuder  The MAILING DATE of this communication appears on the cover sh et with the correspondence address — Period for Reply  A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE ③ MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.  Editions of time may be available under the positions of 3 CFR 1.136(a). In no event, however, may a reply be limely filled if the SS, SS, SS, SS, SS, SS, SS, SS, SS, SS			09/995,882	HALES ET AL.			
The MAILING DATE of this communication appears on the cover sh et with the correspondence address — Period for Reply  A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.  Edensions of time mybe sevaluable under the provision of 30 CFR 1.13(a), in no event, however, may a reply be limitly filed after SX (6) MONTHS from the mailing date of this communication.  If the protect on they specified above is use than this (70) days, a vite occurred from the mailing date of this communication.  Follows or early within the set or extended prior of for reply will be provided by the provided by the Office and the communication.  Follows or early within the set or extended prior of for reply will by statuta, cause the septication to become ABANDONED (35 U.S. C. § 133, Any reply received by the Office aller then three membras faths the militage date of this communication, even if timely filed, may reduce any senset patient term adjustment. See 37 CFR 1.704(b).  Status  1) □ Responsive to communication(s) filed on 12 January 2004.  2a) □ This action is FINAL. 2b) □ This action is non-final.  3) □ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11, 453 O.G. 213.  Disposition of Claims  4) □ Claim(s) 1-17.24-37.39-49.51 and 53-74 is/are pending in the application.  4a) □ Of the above claim(s) □ is/are withdrawn from consideration.  5) □ Claim(s) 1-9.24-37.40-49 and 53-59 is/are allowed.  6) □ Claim(s) 1-17.61-63.68.69 and 71-74 is/are objected to.  8 □ Claim(s) 12.17.61-63.68.69 and 71-74 is/are objected to.  8 □ Claim(s) 12.17.61-63.68.69 and 71-74 is/are objected to.  9 □ The specification is objected to by the Examiner.  Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  Replacement drawing sheet(s) including the correction is required if the drawing(s) sobjected to. So objected	•	Office Action Summary	Examiner	Art Unit			
A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MILLING DATE OF THIS COMMUNICATION.  Ederations of lines may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be limely filled with 82 No. (Month's brown because the provisions of 37 CFR 1.136(a). In no event, however, may a reply be limely filled with 82 No. (Month's fill of the provisions of 37 CFR 1.136(a). In no event, however, may a reply be limely filled with 82 No. (Month's fill of the provisions of 37 CFR 1.136(a).  If NO paried for reply is specified above, the maximum statutory period will apply and will expire 35 No. (Month's from the mailing date of this communication.  Failure for event with the set of evented period for evented period for reply with by statute, cause the application to become ABANDOCHE (5 d V.S. C. \$133).  Any prely reply reply reply the best of the set of the communication, even if timely filled, may reduce any control potent term adjustment. Set 37 CFR 1.170(b).  Status  1) Responsive to communication(s) filled on 12 January 2004.  2a) This action is FINAL  2b) This action is non-final.  3) Since this application is in condition for allowance except for formal matters, prosecution as to the ments is closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11, 453 O.G. 213.  Disposition of Claims  4) Claim(s) 1-17.24-37.39-49.51 and 53-74 is/are pending in the application.  4a) Of the above claim(s) is is/are withdrawn from consideration.  5) Claim(s) 1-1.113-16.39.51, 60.64-67 and 70 is/are rejected.  7) Claim(s) 12.17.61-63.68.69 and 71-74 is/are objected to.  8) Claim(s) 12.17.61-63.68.69 and 71-74 is/are objected to.  Claim(s) 12.17.61-63.68.69 and 71-74 is/are objected to.  Claim(s) 12.17.61-63.68.69 and 71-74 is/are objected to by the Examiner.  Application Papers  9) The specification is objected to by the Examiner.  10) The drawing(s) filled on is/are: a) accepted or b) objected to by the Examiner.  Applicant may not request that any objection							
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1) Notice of References Cited (PTO-892)  4) Interview Summary (PTO-413)	_						
2) Notice of Draftsperson's Patent Drawing Review (PTO-948) 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date 5) Notice of Informal Patent Application (PTO-152) Paper No(s)/Mail Date	2)  Notice 3)  Infor	ce of Draftsperson's Patent Drawing Review (PTO-948) mation Disclosure Statement(s) (PTO-1449 or PTO/SB/08	5) Notice of Informal				

Application/Control Number: 09/995,882

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#### **DETAILED ACTION**

## Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

The factual inquiries set forth in *Graham* v. *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

- 1. Determining the scope and contents of the prior art.
- 2. Ascertaining the differences between the prior art and the claims at issue.
- 3. Resolving the level of ordinary skill in the pertinent art.
- 4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 10,11,13-16,39,51,60,64-67 and 70 are rejected under 35 U.S.C. 103(a) as being unpatentable over MacLeod in view of More.

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MacLeod discloses an apparatus and method for transmitting signals to and from a downhole sensor 176,178 to an above ground controller or receiver 252. The sensors sense a downhole parameter. A downhole transmitter sends electromagnetic waves through the ground and drill string to the above ground receiver. The tool is lowered into the ground and signals are sent from the sensors to the above ground receiver. The sensed signals are then interpreted and a command signal is sent to the downhole tool to control or actuate the tool. MacLeod is considered to disclose all of the claimed limitations except for sending the signal from the sensors to the above ground receiver directly through the ground the frequency and type of wave generated. While MacLeod uses the drill string to send the signals to the surface, he also sends signals through the ground. More teaches that it is known to send signals from an above ground source to a below ground tool directly through the earth. It would have been considered obvious to send the signals of MacLeod directly through the ground as taught by More since the path the signals take does not effect the device's operation and it is known to directly send signals through the ground. By directly sending the signals through the ground, the communication path will be established even if the drill string would break or fail. As to claims 11.60 and 70, the tool is a mechanical tool. As to claim 13, the tool is on a drill string. As to claim 64, a transmitter is provided to propagate electromagnetic waves. As to claims 14-16 and 65-67 the frequency and type of wave generated (square or sinoidal) would have been considered an obvious design choice since the operator could randomly select any waveform and frequency.

## Allowable Subject Matt r

Claims 1-9,24-37,40-49 and 53-59 are allowed.

Claims 12,17,61-63,68,69 and 71-74 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

#### Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

### Response to Arguments

Applicant's arguments with respect to claims 10,11,13-16,39,51,60,64-67 and 70 have been considered but are most in view of the new ground(s) of rejection.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to William P Neuder whose telephone number is 703-308-2150. The examiner can normally be reached on Tuesday through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David J Bagnell can be reached on 703-308-2151. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

William P Neuder Primary Examiner Art Unit 3672

W.P.N.